IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, *et al.*,	)	Case No. 1:17-cv-002768
Plaintiffs,	)	The Honorable Judge Robert M. Dow Jr.
v.	)	
U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. CUSTOMS AND BORDER PROTECTION,	)	
Defendants.	)	

ACLU'S OPPOSITION TO DEFENDANTS' MOTION TO STAY PROCEEDINGS

By their Motion to Stay Proceedings (the "Stay Motion" or "Mot."), the Department of Homeland Security ("DHS") and U.S. Customs and Border Protection ("CBP") (together, the "Agencies") ask this Court to suspend its adjudication of this straightforward Freedom of Information Act lawsuit (the "Illinois Action") because they have moved to consolidate it with other FOIA lawsuits in Washington, D.C. (the "MDL Action").

The MDL Action, which the Agencies initiated in lieu of answering the Complaint, is a meritless attempt to persuade a single tribunal to oversee compliance by *different* Agency offices with *different* FOIA requests filed by *different* ACLU affiliates seeking *non-overlapping* records from *local* custodians in *different* jurisdictions. It is not likely to succeed. But its merits are not before this Court, and its pendency is irrelevant to the Agencies' well-settled burden to justify halting progress in this action. What *is* relevant, and dispositive, is that this is a FOIA lawsuit.

Federal courts universally recognize that delays are inherently prejudicial in FOIA cases. The statute was enacted precisely to *prevent* the unilateral delays the Agencies ask the Court to bless, and the Agencies do not meaningfully dispute the prejudicial impact of a stay, failing the

first of three factors they must satisfy. Instead, they simply pronounce that there is no prejudice, without citing a single FOIA case, much less one in which any court has issued a stay.

The Agencies' showings on the other factors are similarly deficient. For harm, they claim that an additional layer of bureaucracy they have elected to implement will inconvenience the cumbersome and unlawful manner in which they propose to begin complying with Plaintiffs' FOIA request. This "harm" is not only of the Agencies' own making, but it flatly contravenes their legal duty to process the FOIA Request in the Illinois Action (which expressly disclaims any interest in centralized records, and seeks only records housed in local offices, pertaining to local incidents and enforcement) in a manner tailored to its particular facts and circumstances.

As for judicial economy, any progress in this case will *aid* judicial economy, however the MDL Panel may ultimately rule. And the notion that judicial economy will be advanced by dumping non-overlapping records from jurisdictions across the country in the lap of a single MDL panel *en masse*, and asking that same panel to render, as it must, fact-specific determinations as to particular records, and context-specific determinations as to searches of jurisdiction-specific offices, records systems and custodians, misunderstands FOIA litigation.

Plainly put, this Court should neither excuse the Agencies from their obligations in this case, nor cease to move it forward. The Stay Motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Freedom of Information Act

FOIA was enacted to prevent federal agencies from unilaterally determining how to comply with requests for public records. "Congress intentionally set harsh time limits for agencies to respond to FOIA requests because it recognized that information is often useful only if it is timely." *Gilmore v. Dep't of Energy*, 33 F. Supp. 2d 1184, 1189 (N.D. Cal. 1998). Agencies must respond to FOIA requests within 20 days, 5 U.S.C. § 552(a)(6)(A)(i), and FOIA

creates an enforceable right to expedited disclosure where, as here, a request seeks records of heightened public interest. 5 U.S.C. § 552(a)(6)(E)(v)(II). Congress has repeatedly narrowed the circumstances under which agencies may lawfully extend statutory time limitations, and courts routinely deny stays requested by agencies seeking to suspend those deadlines. *Donham v. U.S. Dep't of Energy*, 192 F. Supp. 2d 877, 882 (S.D. Ill. 2002) (agency backlogs do not justify stays or suspend expedited processing; reviewing cases).

To prevent lax case management from undermining these provisions, FOIA requires courts to minimize delays in adjudicating FOIA disputes. *See, e.g., Ferguson v. FBI*, 722 F. Supp. 1137, 1144 (S.D.N.Y. 1989) ("Prompt review . . . is critical to FOIA users and to the purposes of the Act"). FOIA halves the answer deadline the United States ordinarily enjoys to 30 days, 5 U.S.C. § 552(a)(4)(C), and in the Priorities Act, Congress required courts to expedite deadlines and the processing of responsive records in FOIA actions where the FOIA claims are non-frivolous and involve time-sensitive records. 28 U.S.C. § 1657(a); *Ferguson*, 722 F. Supp. at 1144; *Freedom Commc'ns Inc. v. FDIC*, 157 F.R.D. 485, 486 (C.D. Cal. 1994) (The "special designation makes FOIA actions first among equals."); *see also* H.R. Rep. 98-985, 4, 1984 U.S.C.C.A.N. 5779, 5782-84 (expedited treatment is necessary where "there is a special public or private interest in expeditious treatment of their case" or where "failure to expedite would result in mootness or deprive the relief requested of much of its value").

FOIA also constrains agency discretion in deciding how to search for responsive records, requiring agencies to tailor searches for responsive records to the facts and circumstances of particular FOIA requests, a "context-dependent standard" subject to challenge and judicial supervision. *Rubman v. U.S. Citizenship & Imm. Serv's*, 800 F.3d 381, 387 (7th Cir. 2015).

B. The Illinois Request

On January 27, 2017, President Trump signed an Executive Order entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States," which halted refugee admissions and barred entrants from a number of predominantly Muslim countries from the United States. *See* Complaint (Dkt. 1) at ¶¶ 2-4. News reports described Defendants' implementation of the Executive Order as "chaotic" and "total[ly] lack[ing] . . . clarity and direction," particularly at O'Hare, and both Illinois Senators Durbin and Duckworth called for a formal inquiry.[1]

Accordingly, on February 2, 2017, ACLU affiliates in the central Midwest submitted a FOIA request seeking *purely local* records related to CBP's *local* interpretation and enforcement of the Executive Order at O'Hare International Airport, and other regional airports and ports of entry. Compl. ¶¶ 24-25 & Ex. A (the "Illinois Request") at 4-5. The Illinois Request expressly *excluded* records centrally maintained at the Agencies' headquarters. *Id.* ¶ 21 & Ex. A at 7. In light of the intense public controversy over the Executive Order and its problematic implementation, the Illinois Request sought expedited processing. Compl., ¶ 27 & Ex. A at 8.

The Agencies neither responded, nor addressed expedited processing. Compl. ¶¶ 37-47.

C. The Illinois Action

To enforce its right to timely compliance with the Illinois Request, the ACLU filed the Illinois Action on April 12, 2017. On that date, ACLU affiliates in other regions of the country filed lawsuits seeking different, and purely local, records pertaining to the implementation of the Executive Order (the "Local Lawsuits").[2] *See* Dkt. 22-2 (listing the Local Lawsuits).

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[1] *See, e.g.*, Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of Muslim Ban Rollout, Orders Document Preservation* (THE INTERCEPT, Feb. 1, 2017), *available at* https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/.

[2] The insular nature of the Local Lawsuits is described more fully in the joint Opposition to the MDL Motion, a true and correct copy of which is appended hereto as Exhibit A.

D. The Agencies' Motion to Consolidate

The Agencies elected not to file a responsive pleading in the Illinois Action. Instead, the Agencies commenced a separate action on May 8, 2017, a week before its answer deadline, before the Judicial Panel on Multidistrict Litigation (the "MDL Panel"), and filed an omnibus motion to transfer each of the Local Lawsuits to the U.S. District Court for the District of Columbia for consolidated pretrial proceedings. Dkt. 22.

Later that day, the Agencies informed the ACLU that it did not intend to prepare a responsive pleading in the Illinois Action, and requested the ACLU's consent for an extension of time to answer.[3] Eliding that each Local Lawsuit sought different records, maintained by different custodians in different record systems at different field offices, and arising from different incidents at the different local airports and ports of entry, the Agencies claimed that the Local Lawsuits sought "substantially identical categories of records from various CBP offices" and indicated that they would seek entry of a stay over the ACLU's objection. The ACLU consented to an extension of time for the Agencies to Answer, but declined to consent to a stay,[4] and on May 15, 2015, the Agencies' Answer deadline was extended to June 29, 2017. Dkt. 25.

E. The Belated Acknowledgment of the Illinois Request

By letter dated May 26, 2017, two weeks after the Agencies moved to stay this suit, DHS purported to respond to the Illinois Request and all of the FOIA requests at issue in the Local Lawsuits (the "Omnibus Response").[5] In that letter, DHS claimed that the FOIA requests at issue in the Illinois Action and the Local Lawsuits "seek the same or substantially the same *categories* of information," and unilaterally stated that it would not tailor its searches to the circumstances of the local requests. Omnibus Resp. at 3 ("A single search for records responsive

[3] A true and correct copy of that correspondence is appended hereto as Exhibit B.

[4] A true and correct copy of that correspondence is appended hereto as Exhibit C.

[5] A true and correct copy of that correspondence is appended hereto as Exhibit D.

to the Coordinated Requests will be coordinated by CBP Headquarters."). The Omnibus Response belatedly "granted" the ACLU's request for expedited processing, but stated that a FOIA backlog would cause further delay. Omnibus Response at pp. 3-4.

ARGUMENT

The Agencies have not met their burden to justify a stay, nor can they. Under well-settled provisions of FOIA of which the Agencies make no mention, further delays in the adjudication of their continuing noncompliance with the Illinois Request will further prejudice the public's right of timely access to critical information about a rapidly evolving controversy.

Contrary to the Agencies' suggestion, "[t]he pendency before the JPML of a motion to transfer under 28 U.S.C. § 1407 does not . . . automatically entitle a party to a stay of a case as to which transfer is sought . . . . [and the] Court's 'jurisdiction continues until any transfer ruling by the Panel becomes effective.'" *Terkel v. AT&T Inc.*, No. 06 C 2680, 2006 WL 1663456, at *1 (N.D. Ill. June 9, 2006). Rather, the Agencies bear the burden of establishing why halting the progress of this straightforward FOIA lawsuit is necessary, *Koyo Battery Co. v. Lunkes*, 2008 WL 5155724, at *1 (N.D. Ill. Dec. 5, 2008), and showing that (1) the prejudice to the ACLU from a stay is outweighed by (2) hardship or inequity to the Agencies, and that "judicial economy favors a stay. *Terkel*, 2006 WL 1663456, at *1. None of these burdens are met.

I. A Stay Prejudices The ACLU's Rights Of Timely Access To Public Records And Prompt Adjudication Of The Agencies' Noncompliance With FOIA.

Pronouncing that "Plaintiffs would not be prejudiced by the limited stay that Defendants have requested" (Mot. 7), the Agencies fail to cite a single FOIA case.[6] That is no surprise, because the requested stay *inherently* prejudices the rights that FOIA guarantees. *Ferguson v.*

[6] *See* Mot. 7 (citing *Davis v. Pfizer, Inc.*, 2014 WL 1599005, at *1 (N.D. Cal. Apr. 21, 2014) (products liability action) and *American Seafood, Inc. v. Magnolia Processing, Inc.*, 1992 WL 102762, at *1 (E.D. Pa. May 7, 1992) (antitrust lawsuit against catfish producer)).

FBI, 722 F. Supp. 1137, 1144 (S.D.N.Y. 1989) ("Prompt review of decisions denying access to government information is critical to FOIA users and to the purposes of the Act."); *see also* H.R. Rep. 98-985, 5-6, 1984 U.S.C.C.A.N. 5779, 5783-84 ("the value of disclosed information is transitory. If this information is not released in a timely manner, it may be of no value at all."). As Congress recognized in the Priorities Act, which specifically references FOIA, delayed adjudication of FOIA disputes prejudices the interests it protects. 28 U.S.C. § 1657(a). And courts recognize their duty to ensure that requests for dilatory case management do not vitiate the very rights FOIA guarantees. *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) ("[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.").

Prejudice to ACLU's right of prompt compliance is particularly severe in this case because the withheld records are central to a roiling public debate over the Executive Order. Repeatedly held unconstitutional, the Executive Order and its successor are the subject of several pending lawsuits,[7] and the Attorney General has promised to appeal the latest affirmance of its unconstitutionality before the Supreme Court. As in other cases involving "great public and media attention" to controversial actions of government, the public's interest in transparency here is particularly vulnerable to delays. *EPIC v. DOJ*, 416 F. Supp. 2d 30, 42 (D.D.C. 2006); *see also ACLU v. DOD*, 2006 WL 1469418, at *7-8 (N.D. Cal. May 25, 2006) ("Getting the requested information quickly might be valuable to would-be protesters and opposition groups" to "help them decide how to express their political viewpoints"); *Gerstein v. CIA*, 2006 WL

[7] *See State of Washington v. Trump*, No. 2:17-cv-00141-JLR (filed Jan. 30, 2017); *Ali v. Trump*, No. 2:17-cv-00135-JLR (filed Jan. 30, 2017); *Doe v. Trump*, No. 2:17-cv-00178-JLR (filed Feb. 7, 2017). Underscoring the public interest in this matter, the Ninth Circuit's February 7, 2017 oral argument in *State of Washington v. Trump* has drawn more than 140,000 views on YouTube. *See* U.S. Court of Appeals for the Ninth Circuit, No. 17-35105, https://www.youtube.com/watch?v=RPOFowWqFGU.

3462658, at *6 (N.D. Cal. Nov. 29, 2005) (requiring expedited processing about "an issue that is not only newsworthy, but was the subject of an ongoing national debate").

The Agencies do not refute the continuing harm caused by their noncompliance. Instead, they suggest it should be excused as *de minimus* because they "anticipate" that the MDL Panel will hold argument on their Motion to Consolidate at the end of July, and, expecting a quick ruling, claim that the stay "would likely be of limited duration." Mot. 7. But as the Seventh Circuit has observed in a similar context, "[t]o delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression." *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994). Even a limited delay does not excuse the prejudice to the public's right to improperly withheld information, especially where, as here, the legal and policy disputes over the Executive Order have rapidly evolved even in the four months since the Illinois Request was submitted. Rather, where access to information is unlawfully restricted, "each passing day" works irreparable harm to the public conversation that relies on it, as "suppressed information grows older" and "[o]ther events crowd upon it." *Nebraska Press Ass'n v. Stuart*, 423 U.S. 1327, 1329 (1975) ("Delay itself is a final decision.").

Tellingly, the Agencies assert that a stay will be inconsequential because they claim they will now begin complying with FOIA. Mot. 7. But FOIA was enacted to guarantee the very *judicial* accountability that the Agencies ask this Court to suspend, and to supersede the *status quo ante*, in which agencies enjoyed the unsupervised discretion to comply with records requests that the Agencies ask this Court to reinstate. *Hamlin v. Kelley*, 433 F. Supp. 180, 182 (N.D. Ill. 1977) ("Congress established strict time limits to prevent the present practices of defendants, and it is Congress' decision in law and not the agencies in delay which governs this case.").

To stay proceedings would obviate the most essential right FOIA provides -- the right to obtain and enforce compliance with its procedural and substantive provisions in court. Indeed,

the Agencies concede that they seek a stay to obtain a period of unfettered discretion in belatedly processing the Illinois Request, because the ACLU "may ask the court to set a schedule for Defendants' search for, and potential release of, responsive information." Mot. 5. But that is precisely the point of FOIA, which entitles a requestor to judicial supervision of prompt and remedial compliance. The rights a FOIA litigant enjoys once agency noncompliance gives it standing to sue, which include seeking appropriate case management orders, obtaining adequate searches, and enforcing expeditious processing of responsive records, are precisely the rights a stay would prejudice. *See, e.g., Edmonds v. FBI*, 417 F.3d 1319, 1323 (D.C. Cir. 2005) (expedited processing "is a statutory right, not just a matter of court procedure.").

II. The Agencies Will Not Suffer Any Hardship

By contrast, the only "harm" the Agencies invoke is both self-inflicted and illusory. The Agencies have improperly[8] elected to conduct a single, centralized search of records, and on that basis, they claim that they will be inconvenienced by unspecified pretrial proceedings relating to that centralized search in multiple jurisdictions before the MDL Motion is inevitably granted.

As an initial matter, the MDL Motion does not excuse the Agencies from proving to *this* court that *this* lawsuit should be stayed. *Terkel*, 2006 WL 1663456, at *1. It "does not affect or suspend orders and pretrial proceedings in any pending federal district court action and does not limit the pretrial jurisdiction of that court." MDL Rule 2.1(d). And courts do not simply rubber-stamp motions to stay MDL proceedings as a matter of course; denials are legion. *See e.g., Sehler v. Prospect Mortgage, LLC*, 2013 WL 5184216, at *3 (E.D. Va. Sept. 16, 2013); *Sullivan v. Cottrell, Inc.*, 2012 WL 694825, at *4 (W.D.N.Y. Feb. 29, 2012); *St. Joe Co. v. Transocean*

[8] Delayed, post-suit referral is improper. *See Keys v. Dep't of Homeland Sec.*, 570 F. Supp. 2d 59, 70 (D.D.C. 2008) (referral was not prompt and significantly delayed resolution of FOIA request); *McGehee v. CIA*, 697 F.2d 1095, 1110 (D.C. Cir. 1983) ("when an agency receives a FOIA request for "agency records" in its possession, it must take responsibility for processing the request"); *Paisley v. CIA*, 712 F.2d 686, 691 (D.C. Cir. 1983) (directing agency to justify withholding of improperly referred records).

Offshore Deepwater Drilling Inc., 774 F. Supp. 2d 596, 601 (D. Del. 2011); *Barber v. BP, PLC*, 2010 WL 2266760, at *2 (S.D. Ala. June 4, 2010). Indeed, by citing exclusively non-FOIA cases without providing a single instance in which a stay was granted in a FOIA suit, the Agencies reinforce the inappropriateness of such a measure here.

In any event, the Agencies make little effort to demonstrate any cognizable harm, much less establish "a clear case of hardship or inequity in being required to go forward." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). They identify no real hardship they would suffer absent the proposed blanket stay, other than having to defend this action on a normal schedule. *See* Mot. at 6-7. Instead, the Agencies speculate that "moving forward *could* also result" in conflicting rulings on pre-trial issues. *Id.* at 6 (emphasis added). But they do not identify these potential conflicts, or explain why they are imminent absent a stay. They simply assert that they are also litigating requests for "identical or similar *categories* of records" from requesters other than Plaintiffs, *id.* at 1 (emphasis added) -- ignoring that the legal issues will not be determined by the *categories* of records, but location- and fact-specific questions about *the non-overlapping records themselves*, which the Agencies will bear the burden to establish, on a document-by-document basis, fall within FOIA's exemptions. 5 U.S.C. § 552(a)(4)(b); *U.S. Dep't of Justice v. Landano*, 508 U.S. 165, 180-181 (1993). Although it is impossible to know whether the Agencies will raise the same claimed exemptions in response to the Illinois Request as in others, the application of those exemptions to the particular facts and specific documents at issue will necessarily be factually distinct.

Likewise, the Agencies aver that a stay would avoid "competing demands on the same agency personnel." Yet, if that is so, then they are processing the Illinois Request in violation of FOIA, because the persons capable of providing the direct knowledge reasonably calculated to return responsive records are personnel in the *local* field offices. Indeed, CBP's own regulations

require FOIA requesters who seek records from CBP field offices to serve their FOIA request on the field office itself, not CBP headquarters, and require CBP officers to attempt to locate any such local records upon receipt of a request. 19 C.F.R. § 103.5(d)(2), (g).

In any event, these conclusory averments cannot justify imposition of a stay. *E.g. Ramos v. Capital One*, 2017 WL 895635, at *3 (N.D. Cal. Mar. 7, 2017) ("Aside from conclusory assertions, Defendants have not provided any detail as to why simultaneous litigation of this case and [another] case that have substantial overlap in their factual and legal issues would cause a significant burden."); *In re Maxwell Techs., Inc.*, 2014 WL 2919297, at *1 (S.D. Cal. June 26, 2014) (denying stay because moving party's claim of hardship was "speculative").

At bottom, the "harm" the Agencies profess is nothing more than the compliance FOIA requires of the Agencies in the ordinary course of FOIA litigation; their forecasted inconveniences are illusory and premature. *Barber*, 2010 WL 2266760, at *2 (denying "premature" motion to stay where "the only tangible effect of entering a stay at this time would be to allow defendants a three-month reprieve after service of process before being required to answer the allegations brought by plaintiffs in the Complaint."). Here, as in *Barber*, "[s]uch a protracted delay appears both unnecessary and unwarranted," and "there is no reason in the world why defendants cannot file responsive pleadings prior to the MDL's determination on the pending transfer and consolidation issues," because "[r]egardless of whether and where the MDL Panel ultimately transfers this action for consolidated and coordinated pretrial proceedings, defendants will need to file answers or responsive pleadings." *Id.*

III. A Stay Will Not Significantly Promote Judicial Economy

Judicial economy only favors a stay where "adjudication of the claim would be a waste of judicial effort." *555 M Mfg., Inc. v. Calvin Klein, Inc.*, 13 F. Supp. 2d 719, 724 (N.D. Ill. 1998). Whichever tribunal ultimately supervises the Illinois Action, the Agencies will have to answer

the Complaint, conduct adequate and site-specific searches, and attempt to justify nondisclosure of non-overlapping, local records. Judicial economy is not advanced by suspending judicial responsibilities, like FOIA' various requirements that promote prompt disposition; it is advanced by avoiding inefficiencies in performing them. Adjudicating such questions as may arise in the pendency of the MDL Motion is not wasteful; it is necessary and required by FOIA.

Here again, the Agencies' decision to "coordinat[e] [CBP's] search for records responsive to all of the requests" from "CBP's headquarters in Washington, D.C.," does not improve judicial efficiency, it impairs it. Mot. at 5. Unlike the only two FOIA cases the Agencies cite in their Motion to Consolidate, the FOIA requests at issue here and in the Local Lawsuits did *not* seek agency-wide records, they sought non-overlapping locally maintained records.[9] And unlike all of the non-FOIA cases the Agencies cite in their Motion to Stay, this FOIA lawsuit presents seeks highly differentiated, fact-specific, and local-context-driven relief from the Local Lawsuits.[10]

Accordingly, even if the MDL Motion is granted, each ACLU affiliate in each Local Lawsuit will be forced to unwind the Agencies' improperly centralized search protocol under the facts and circumstances of the local incidents and implementation sought by their non-overlapping requests. For example, records pertaining to the following unique incidents would be within the ambit of the Illinois Request:

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[9] *See* Dkt. 22-1 at 2 (citing *In re Freedom Magazine/IRS FOIA Litig.*, No. 910 (J.P.M.L Feb. 12 1992); *In re Church of Scientology Flag Serv. Org./IRS FOIA Litig.*, No. 892 (J.P.M.L. Sept. 4, 1991)); *see also* Ex. A at 11-12 (describing the inapposite nature of the Scientology cases, the only two instances in the history of FOIA that the MDL Panel has granted a motion to consolidate FOIA lawsuits).

[10] *See Wilbanks v. Merck & Co., Inc.*, 2005 WL 2234071, at *1 (W.D. Tenn. Sept. 13, 2005) (cases raising similar jurisdictional issue had already been consolidated and "hundreds, possibly thousands, of others" were transferred or "awaiting transfer in other districts"); *C.A. v. Pfizer, Inc.*, 2013 WL 6091766, at *2 (N.D. Cal. Nov. 19, 2013) (involving "cases previously transferred" to MDL panel); *Namovicz v. Cooper Tire & Rubber Co.*, 225 F. Supp. 2d 582, 583 n.2 (D. Md. 2001) (cases "filed on identical grounds seeking the same relief"); *In re Mush Cay Litigation*, 330 F. Supp. 2d 1364, 1365 (J.P.M.L. 2004) (cases arising "from the same underlying commercial transaction," not addressing stay); *In re Air Crash Near Kirksville, Missouri*, 383 F. Supp. 2d 1382, 1383 (J.P.M.L. 2005) (same).

1. The detention of at least 17 travelers, including lawful permanent residents, at O'Hare on January 28, 2017.[11]
2. The detention of persons with health conditions and the denial of access to medication at O'Hare.[12]
3. The detention of a woman of Syrian origin who flew from Saudia Arabia to O'Hare to visit her sick mother.[13]
4. The hundreds of protestors who gathered at O'Hare's Terminal 5 to protest the Executive Order. [14]
5. An elderly couple of Iranian origin who were lawful permanent residents of the United States and were returning to the United States from a visit to Iran, and interactions between ACLU lawyers and CBP officers who refused to confirm or deny that the couple was being held.
6. The communications breakdown in the CBP Chicago Field Office, which stopped answering telephone calls from attorneys and the public.

Unpacking the adequacy of a single, centralized search to capture these types of incidents, and all of the unique incidents that transpired at the field offices and airports separately at issue in the Local Lawsuits, will not be efficiently done by a single tribunal, and would be more efficiently supervised as the Illinois Request and the other FOIA requests were filed -- on a jurisdiction-by-jurisdiction basis, where the *same* local custodians and records systems, and the *same* incidents and implementations, can be addressed in an efficient and focused manner. To the extent that progress can be made in the months pending the MDL Panel's ruling, it should not be stayed.

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[11] Grace Wong and Stacy St. Clair, *Fear, anger at O'Hare: Travelers freed after being held over Trump order, lawyers say* (Chicago Tribune, January 28, 2017), *available at* http://www.chicagotribune.com/news/local/breaking/ct-several-reportedly-detained-at-o-hare-international-airport-20170128-story.html; Shannon Antinori, *Muslim-Ban Detainees at O'Hare Released* (Chicago Patch, January 29, 2017), *available at* https://patch.com/illinois/chicago/demonstrators-protesting-ohare-over-trump-muslim-ban.

[12] Emily Donovan, *Terminal is just the start, lawyers vow* (Chicago Daily Law Bulletin, Jan. 31, 2017), *available at* http://www.chicagolawbulletin.com/Archives/2017/01/31/Lawyers-immigrant-ban-1-31-17.aspx; Anna Silman, *These Are the Attorneys Fighting Trump's Immigration Ban at Airports Around the Country* (New York Magazine, Jan. 31, 2017), *available at* http://nymag.com/thecut/2017/01/the-women-fighting-trumps-immigration-ban.html.

[13] Christopher Mathias, *American Just Sent Back a Syrian Woman Trying to Visit Her Sick Mother* (Huffington Post, Jan. 28, 2017), *available at* http://www.huffingtonpost.com/entry/syrian-woman-sick-mother-muslim-ban_us_588cdcfce4b017637794a715.

[14] *See* Alex Nitkin, *Activists, Aldermen Pack O'Hare For 'Emergency Protest' Of Travel Ban* (DNAInfo, Jan. 28, 2017), *available at* https://www.dnainfo.com/chicago/20170128/ohare/activists-alderman-plan-emergency-protest-of-muslim-ban-at-ohare.

Moreover, *appropriate* judicial efficiencies can be achieved by coordination, without entry of a stay or consolidation before the MDL Panel. For example, in the wave of FOIA litigation over Hillary Clinton's emails, the Chief Judge of the U.S. District Court in the District of Columbia emphasized the value of informal coordination in the ordinary course of case management, and rejected a motion to join FOIA lawsuits that presented similar issues. Order, *In Re: U.S. Department of State FOIA Litigation Regarding Emails of Certain Former Officials*, No. 15-1188, ECF No. 41 at 2 (D.D.C. Oct. 8, 2015).[15] Given the targeted local nature of the Illinois Request, material duplication of effort by any of the parties or the various federal courts is highly unlikely, but the ACLU is committed to collaborating and cooperating with the Agencies and the Plaintiffs in the Local Lawsuits to avoid any inefficiencies. That coordination, however, can and should be effected by appropriate case management in this action, not by staying it wholesale.

CONCLUSION

For the foregoing reasons, the Court should deny the Agencies' Motion.

DATED this 30 day of May, 2017.

Respectfully submitted,

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[15] A true and correct copy of this Order is appended hereto as Exhibit E.

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2017, I electronically filed the foregoing **ACLU'S OPPOSITION TO DEFENDANTS' MOTION TO STAY PROCEEDINGS** with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record.

/s/ Patrick S. Kabat